

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

HENRY M. DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:10-CV-1429 NAB
)	
MICHAEL WHITE, et al.,)	
)	
Defendants.)	

PLAINTIFF'S STATEMENT OF UNCONTROVERTED MATERIAL FACTS

COMES NOW Plaintiff Henry M. Davis ("Plaintiff"), pursuant to Rule 56 of the Federal Rules of Civil Procedure and E.D.Mo. L.R. 4.01(E) sets forth the following Statement of Uncontroverted Material Facts in support of Plaintiff's Motion for Partial Summary Judgment on Count II of Plaintiff's First Amended Complaint against Defendant John Beaird ("Defendant Beaird"):

UNCONTROVERTED MATERIAL FACTS

1. At all relevant times, Defendant Beaird acted under color of state law as a Police Officer for the City of Ferguson Police Department. (Established by the Record – *See* Plaintiff's First Amended Complaint, ¶ 14; Doc. #50 – Exhibit 1 [hereinafter "Plaintiff's Complaint – Ex. 1"] and Joint Answer of Defendants to Plaintiff's First Amended Complaint, ¶ 14 – Doc. #52 – Exhibit 2 [hereinafter "Defendants' Answer – Ex. 2"]).

2. On September 20th, 2009, Defendant Beaird encountered Plaintiff Henry Davis at approximately 3:00 a.m. (Established by the Record – *See* Deposition of John Beaird – Exhibit 3 [hereinafter "Beaird depo. – Ex. 3"], TR. 11:5-7; 12:21-23).

3. Defendant Beaird encountered Plaintiff near Highway 270 and West Florissant. (Established by the Record – *See* Beaird depo. – Ex. 3, TR. 23:13-19).

4. Defendant Beaird handcuffed Plaintiff and placed Plaintiff in Defendant Beaird's vehicle. (Established by the Record – *See* Beaird depo. – Ex. 3, TR. 11:10-15).

5. Plaintiff's vehicle was towed and then Defendant Beaird left in his vehicle with Plaintiff and traveled to the Ferguson Police Department. (Established by the Record – *See* Beaird depo. – Ex. 3, TR. 31:12-23).

6. At the Ferguson Police Department Jail Defendant Beaird, Officer Pillarick and Plaintiff walked to Cell #3. (Established by the Record – *See* Beaird depo. – Ex. 3, TR. 40:14-22; 41:12-16).

7. At Cell #3 there was physical contact between Defendant Beaird, Defendant Michael White ("Defendant White"), Defendant Kim Tihen ("Defendant Tihen") and Plaintiff and the nature of the physical contact is in dispute. (Established by the Record – *See* Plaintiff's Complaint – Ex. 1, ¶¶ 29-34 and Defendants' Answer – Ex. 2, ¶¶ 29-34).

8. During the incident in Cell #3 Defendant White's nose was bleeding. (Established by the Record – *See* Beaird depo. – Ex. 3, TR. 68:7-23).

9. During the incident in Cell #3 Plaintiff was bleeding from his head. (Established by the Record – *See* Beaird depo. – Ex. 3, TR. 69:13-70:1).

10. On September 24, 2009 Defendant Beaird executed four (4) separate, sworn affidavits of municipal informations complaining that Plaintiff committed the municipal offenses of property damage. (Established by the Record – *See* Plaintiff's Complaint – Ex. 1, ¶ 45 and Defendants' Answer – Ex. 2, ¶ 45).

11. On September 24, 2009, Defendant Beaird signed a Complaint/Information alleging that Plaintiff did unlawfully "commit the offense of "Property Damage" to wit, did; transfer blood to the uniform of P.O. K. Tihen #572 when attempting to subdue Davis, who was actively resisting"

and signed it “being duly sworn, on oath, and under penalties of perjury.” (Established by the Record – *See* Complaint/Information – P.O. K. Tihen #572 Uniform – Exhibit 4 [hereinafter “Complaint/Information – P.O. K. Tihen #572 Uniform – Ex. 4”]).

12. On September 24, 2009, Defendant Beard signed a Complaint/Information alleging that Plaintiff did unlawfully “commit the offense of “Property Damage” to wit, did; transfer blood to the uniform of Corrections Officer C. Pillarick #564 when attempting to subdue Davis, who was actively resisting” and signed it “being duly sworn, on oath, and under penalties of perjury.” (Established by the Record – *See* Complaint/Information – Corrections Officer C. Pillarick #564 Uniform – Exhibit 5 [hereinafter “Complaint/Information – Corrections Officer C. Pillarick #564 Uniform – Ex. 5”]).

13. On September 24, 2009, Defendant Beard signed a Complaint/Information alleging that Plaintiff did unlawfully “commit the offense of “Property Damage” to wit, did; transfer blood to the uniform of P.O. M. White #560 when attempting to subdue Davis, who was actively resisting” and signed it “being duly sworn, on oath, and under penalties of perjury.” (Established by the Record – *See* Complaint/Information – P.O. M. White #560 Uniform – Exhibit 6 [hereinafter “Complaint/Information – P.O. M. White #560 Uniform – Ex. 6”]).

14. On September 24, 2009, Defendant Beard signed a Complaint/Information alleging that Plaintiff did unlawfully “commit the offense of “Property Damage” to wit, did; transfer blood to my uniform while I was forced to subdue Davis who was actively resisting” and signed it “being duly sworn, on oath, and under penalties of perjury.” (Established by the Record – *See* Complaint/Information – Defendant Beard Uniform – Exhibit 7 [hereinafter “Complaint/Information – Defendant Beard Uniform – Ex. 7”]).

15. A municipal case was commenced against Plaintiff in the Municipal Court of

Ferguson, Missouri captioned: *The City of Ferguson vs. Henry M. Davis; Case No. 09-16166* (the “Municipal Case”). (Established by the Record – *See* Plaintiff’s Complaint – Ex. 1, ¶ 47 and Defendants’ Answer – Ex. 2, ¶ 47).

16. Plaintiff hired attorney Michael K. Kielty to represent him in the Municipal Case of: *The City of Ferguson vs. Henry M. Davis; Case No. 09-16166*. (Established by the Record – *See* Affidavit of Michael K. Kielty – Exhibit 8, ¶ 2 [hereinafter “Kielty Affidavit – Ex. 8”]).

17. In *The City of Ferguson vs. Henry M. Davis; Case No. 09-16166*, Plaintiff was charged with the following municipal violations: (1) Driving While Intoxicated; (2) Speeding; (3) Failure to Drive in a Single Lane; (4) No Proof of Insurance; (5) Failure to Obey Police Officer; and (6) Four (4) separate counts of Destruction of City Property. (Established by the Record – *See* Kielty Affidavit – Ex. 8, ¶ 3).

18. On behalf of Plaintiff, attorney Michael K. Kielty conducted plea negotiations with the prosecuting attorney for the City of Ferguson to dispose of all of the charges in *The City of Ferguson vs. Henry M. Davis; Case No. 09-16166*. (Established by the Record – *See* Kielty Affidavit – Ex. 8, ¶ 4).

19. On behalf of Plaintiff, attorney Michael K. Kielty reached an agreement with the prosecuting attorney for the City of Ferguson to dispose of all of the charges in *The City of Ferguson vs. Henry M. Davis; Case No. 09-16166*. (Established by the Record – *See* Kielty Affidavit – Ex. 8, ¶ 5).

20. In accordance with the plea agreement with the prosecuting attorney for the City of Ferguson, the following terms were agreed upon in *The City of Ferguson vs. Henry M. Davis; Case No. 09-16166*: (1) the DWI charge was amended to Careless & Imprudent Driving; (2) the Speeding ticket remained as cited; (3) the Failure to Drive in a Single Lane violation was

amended to a non-moving violation; (4) the No Proof of Insurance violation was amended to a non-moving violation; (5) the Failure to Obey Police Officer remained as charged; (6) two (2) counts of Destruction of City Property remained as charged; and (7) two (2) counts of Destruction of City Property were dismissed. (Established by the Record – *See* Kielty Affidavit – Ex. 8, ¶ 6).

21. In accordance with the plea agreement in *The City of Ferguson vs. Henry M. Davis; Case No. 09-16166*, Plaintiff pleaded guilty to Careless & Imprudent Driving, Speeding, two (2) separate non-moving violations, Failure to Obey Police Officer and two (2) counts of Destruction of City Property. (Established by the Record – *See* Kielty Affidavit – Ex. 8, ¶ 7).

22. In conducting the plea negotiations in *The City of Ferguson vs. Henry M. Davis; Case No. 09-16166* attorney Michael K. Kielty reviewed and relied upon the 4 Complaint/Informations executed by Officer John Beaird that alleged Plaintiff committed the offense of “Property Damage” (Destruction of City Property) by transferring blood onto the uniforms of P.O. K. Tihen #572, Corrections Officer C. Pillarick #564, P.O. M. White #560 and P.O. J. Beaird. (Established by the Record – *See* Kielty Affidavit – Ex. 8, ¶ 8).

23. Plaintiff did not transfer blood to Defendant Beaird’s uniform as Defendant Beaird admitted under oath on January 14, 2013 in his deposition from the criminal case of: *State of Missouri vs. Henry M. Davis, Case No. 10SL-CR07793-01*. (Established by the Record – *See* Criminal Case Deposition of John Beaird – Exhibit 9 [hereinafter “Beaird Criminal depo. – Ex. 9”], TR. 38:14-16; 55:9-13).

24. On January 14, 2013, Defendant Beaird did not know if Officer Tihen had blood on her after the incident with Plaintiff on September 20, 2009 in the jail was over. (Established by the Record – *See* Beaird Criminal depo. – Ex. 9, TR. 38:17-20).

25. On January 14, 2013, Defendant Beaird did not remember seeing blood on Officer White's clothing after the incident with Plaintiff on September 20, 2009 in the jail was over. (Established by the Record – *See* Beaird Criminal depo. – Ex. 9, TR. 36:12-37:5).

26. Plaintiff did not transfer blood to Officer Pillarick's uniform as Officer Pillarick admitted under oath that he did not get blood on his uniform the night of the incident with Plaintiff even when opposition counsel re-questioned Officer Pillarick. (Established by the Record – *See* Deposition of Christopher Pillarick – Exhibit 10 [hereinafter "Pillarick depo. – Ex. 10"], TR. 36:13-15; 49:5-11).

27. Plaintiff did not transfer blood to Officer White's uniform as Officer White admitted under oath that any blood that got on his uniform was from himself, not Plaintiff. (Established by the Record – *See* Deposition of Michael White – Exhibit 11 [hereinafter "White depo. – Ex. 11"], TR. 37:5-11).

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2013, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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